

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

JAMES S. KNOWLES,

Plaintiff,

v.

BIG BEAR AMERICAN MADE CHOPPERS, INC.,  
PRO-ONE PERFORMANCE MANUFACTURING, INC.,  
INDUSTRIAL MACHINING CO., STANDARD BOLT  
NUT & SCREW CO, INC., ANORACK ANONDIZE  
RACK COMPANY, INC., AIR FASTENERS, INC.,  
GOLD RUSH MOTORSPORTS, INC, MARC  
SUSMAN d/b/a CLASIC & CUSTOM RIDES and  
MARCUS J. MATHEWS,

Defendants.

Civil Action No.: <sup>5</sup>04-CV-~~1206~~ 00411  
(NAM/DEP)

**TOLLING AGREEMENT**

**WHEREAS**, an action entitled *James S. Knowles v. Big Bear American Made Choppers, Inc.; Pro-One Performance Manufacturing, Inc.; and Gold Rush Motorsports, Inc.* was commenced in the United States District Court for the Northern District of New York on April 4, 2005, and was assigned civil action number 5:04-CV-01206-NAM-DEP (the "Action");

**WHEREAS**, Plaintiff James S. Knowles filed a First Amended and Supplemental Complaint on February 27, 2006, adding Industrial Machining Co., and Standard, Nut & Screw, Inc., as defendants;

**WHEREAS**, an entry of default was had against Defendant Industrial Machining co., on March 8, 2007;

**WHEREAS**, Plaintiff James S. Knowles filed a Second Amended and supplemental Complaint on April 14, 2006, adding Anorack/Anondize Rack Company, Inc., and Air Fasteners, Inc., as defendants;

**WHEREAS**, Plaintiff James S. Knowles filed a Third Amended and Supplemental Complaint on November 20, 2006, adding Marc Susman d/b/a Classic & Custom Rides as a defendant;

**WHEREAS**, Plaintiff James S. Knowles filed a Fourth Amended and Supplemental Complaint on December 28, 2006, adding Marcus J. Mathews as a defendant;

**WHEREAS**, the parties to this Agreement desire to discontinue the Action *without* prejudice as against Pro-One Performance Manufacturing, Inc., and toll all applicable statutes of limitations until the final termination of the instant Action; and

**WHEREAS**, it is the mutual intent of the undersigned to defer any litigation or claims involving the undersigned parties, without thereby altering the claims or defenses available to the parties, except as specifically provided herein.

**NOW, THEREFORE**, Plaintiff James S. Knowles and Big Bear American Made Choppers, Inc., Pro-One Performance Manufacturing, Inc., Standard Bolt, Nut & Screw Co., Inc., Anorack/Anondize Rack Company, Inc., Air Fasteners, Inc., Gold Rush Motorsports, Inc., Marc Susman d/b/a Classic & Custom Rides and Marcus J. Mathews, by and through their undersigned counsel, stipulate and agree as follows:

1. Within five (5) business days following execution of this Agreement and execution by all parties to the Action of a Stipulation of Dismissal in the form attached hereto as **Exhibit A** ("Stipulation of Dismissal"), Defendant Pro-One Performance Manufacturing, Inc., shall file said Stipulation of Dismissal with the Court.

2. All applicable statutes of limitations or repose shall be tolled until the final termination of this Action by settlement, stipulation, order and/or judgment ("termination").

3. In the event any party to this action discovers facts or evidence following the filing of the Stipulation of Dismissal which, in the sole discretion of his counsel, warrant legal proceedings against Pro-One Performance Manufacturing, Inc., Pro-One Performance Manufacturing, Inc., agrees not to assert, plead or raise in any fashion whatsoever, whether by answer, motion or otherwise, any defense or avoidance based on the expiration or running of any statutes of limitations or repose as a result of the passage of time including, but not limited to, laches, estoppel, waiver or other equitable defense; provided, however, that any such defenses are preserved as to accumulated time periods occurring before the date the Action was commenced against Pro-One Performance Manufacturing, Inc., and provided that such legal proceedings are commenced against Pro-One Performance Manufacturing, Inc., prior to the "termination" of the instant Action by and against all parties.

4. The parties further expressly agree to waive, and Pro-One Performance Manufacturing, Inc., agrees not to assert as a defense, the procedural requirements and time limits set forth by the Federal rules of Civil Procedure, including but not limited to FCRP 14, with respect to the initiation of a third party-action. It is expressly agreed that a party to this agreement seeking to assert claims against Pro-One Performance Manufacturing, Inc., as set forth in the preceding paragraph, shall not be required to obtain leave of Court or consent of any other party to do so.

5. The execution of this Agreement does not constitute an admission or acknowledgment of any liability by Pro-One Performance Manufacturing, Inc., with respect to the Action or underlying occurrences.

6. The execution of this Agreement does not constitute an admission or acknowledgment by Plaintiff James S. Knowles any named defendant as to which statutes of limitations or repose, or other defenses concerning the timeliness of commencing an action or proceeding, are applicable to any claims or potential claims of Plaintiff James S. Knowles or any named defendant.

7. Pro-One Performance Manufacturing, Inc., expressly reserves all rights and remedies which it may have in law or equity, except as set forth in this Agreement with respect to statutes of limitations or repose, to contest or defend any claim or cause of action Plaintiff James S. Knowles or any named defendant may assert or initiate against Pro-One Performance Manufacturing, Inc., in any suit or action.

8. This Agreement contains the entire agreement between the parties and no statement, promise or inducement made by any party to this Agreement that is not set forth in this Agreement will be valid or binding. This Agreement may not be enlarged, modified or altered except in writing signed by authorized person(s) on behalf of all parties.

9. The undersigned counsel for the parties certify that they are fully authorized to enter into and to bind such parties to the terms and conditions of this Agreement.

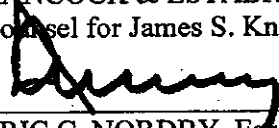
10. This Agreement is effective upon execution by counsel for the parties, and without the requirement of filing with or endorsement by any Court.

11. This Tolling Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall be deemed and may be filed as a single document.

Dated: December 4, 2007

By:

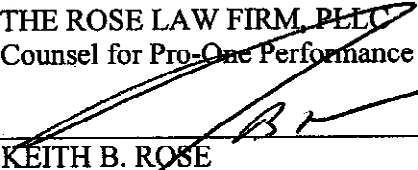
HANCOCK & ESTABROOK, LLP  
Counsel for James S. Knowles

  
ERIC C. NORDBY, Esq.  
Bar Roll No.: 506543  
1500 MONY Tower I  
P.O. Box 4976  
Syracuse, New York 13202

~~Dated: December 4, 2007~~  
January 9, 2008

By:

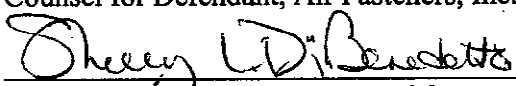
THE ROSE LAW FIRM, PLLC  
Counsel for Pro-One Performance Mfg., Inc.

  
KEITH B. ROSE  
Bar Roll No. 102474  
501 New Karner Road  
Albany, New York 12205

Dated: December 4, 2007

By:

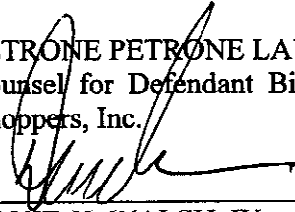
COSTELLO, COONEY, & FEARON, PLLC  
Counsel for Defendant, Air Fasteners, Inc.

  
SHELLY L. DIBENEDETTO, ESQ  
Bar Roll No. 508989  
Salina Place, 205 South Salina Street  
Syracuse, New York 13202-1327

Dated: December 4, 2007

By:

PETRONE PETRONE LAW FIRM  
Counsel for Defendant Big Bear American Made  
Choppers, Inc.

  
DAVID H. WALSH, IV  
Bar Roll No. 512032  
1624 Genesee Street  
Utica, New York 13502

WILSON ELSER LAW FIRM  
Counsel for Defendant Gold Rush Motor Sports,  
Inc.

Dated: December \_\_, 2007

By:

\_\_\_\_\_  
JENNIFER R. OXMAN, ESQ  
Bar Roll No. \_\_\_\_\_  
150 East 42<sup>nd</sup> Street  
New York, New York 10017-5639

GOLDBERG SEGALLA, LLP  
Counsel for Defendant Standard Bolt, Nut & Screw  
Co., Inc.

Dated: December 4, 2007

By:

\_\_\_\_\_  
LATHA RAGHAVAN, ESQ  
Bar Roll No. 505932  
7 Southwoods Boulevard  
Suite 300  
Albany, New York 12211

LAW OFFICES OF CHARLES C. KHYM  
Counsel for Defendant Marc Susman d/b/a Classic  
& Custom Rides

Dated: December \_\_, 2007

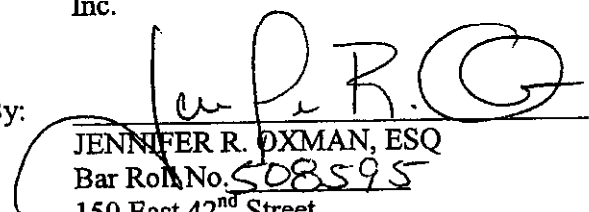
By:

\_\_\_\_\_  
DAVID LAWRENCE, Esq.  
Bar Roll No. \_\_\_\_\_  
39-01 Main Street, Suite 608  
Flushing, New York 11354

WILSON ELSEER LAW FIRM  
Counsel for Defendant Gold Rush Motor Sports,  
Inc.

Dated: December 18, 2007

By:

  
JENNIFER R. OXMAN, ESQ  
Bar Roll No. 508595  
150 East 42<sup>nd</sup> Street  
New York, New York 10017-5639

GOLDBERG SEGALLA, LLP  
Counsel for Defendant Standard Bolt, Nut & Screw  
Co., Inc.

Dated: December \_\_, 2007

By:

\_\_\_\_\_  
LATHA RAGHAVAN, ESQ  
Bar Roll No. \_\_\_\_\_  
7 Southwoods Boulevard  
Suite 300  
Albany, New York 12211

LAW OFFICES OF CHARLES C. KHYM  
Counsel for Defendant Marc Susman d/b/a Classic  
& Custom Rides

Dated: December \_\_, 2007

By:

\_\_\_\_\_  
DAVID LAWRENCE, Esq.  
Bar Roll No. \_\_\_\_\_  
39-01 Main Street, Suite 608  
Flushing, New York 11354

WILSON ELSER LAW FIRM  
Counsel for Defendant Gold Rush Motor Sports,  
Inc.

Dated: December \_\_, 2007

By: \_\_\_\_\_  
JENNIFER R. OXMAN, ESQ  
Bar Roll No. \_\_\_\_\_  
150 East 42<sup>nd</sup> Street  
New York, New York 10017-5639


GOLDBERG SEGALLA, LLP  
Counsel for Defendant Standard Bolt, Nut & Screw  
Co., Inc.

Dated: December \_\_, 2007

By: \_\_\_\_\_  
LATHA RAGHAVAN, ESQ  
Bar Roll No. \_\_\_\_\_  
7 Southwoods Boulevard  
Suite 300  
Albany, New York 12211

LAW OFFICES OF CHARLES C. KHYM  
Counsel for Defendant Marc Susman d/b/a Classic  
& Custom Rides

Dated: December \_\_, 2007

By:  \_\_\_\_\_  
DAVID LAWRENCE, Esq.  
Bar Roll No. 514404  
39-01 Main Street, Suite 608  
Flushing, New York 11354



TREVETT CRISTO SALZER  
& ANDOLINA, P.C.

Dated: December 4, 2007

By:

LOUIS B. CRISTO, ESQ.  
Bar Roll No. 508361  
Two State Street, Suite 1000  
Rochester, New York 14614

MACKENZIE HUGHES, LLP  
Counsel for Defendant Marcus J. Mathews

Dated: December 4, 2007

By:

MARK R. SCHLEGEL, ESQ.  
Bar Roll No. 513172  
101 Smith Salina Street, Suite 600  
P.O. Box 4967  
Syracuse, New York 13221-4967

SO ORDERED:

  
HON. DAVID E. PEEBLES

DATE 1/9/08

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

JAMES S. KNOWLES,

Plaintiff,

v.

BIG BEAR AMERICAN MADE CHOPPERS, INC.,  
PRO-ONE PERFORMANCE MANUFACTURING, INC.,  
INDUSTRIAL MACHINING CO., STANDARD BOLT  
NUT & SCREW CO, INC., ANORACK ANONDIZE  
RACK COMPANY, INC., AIR FASTENERS, INC.,  
GOLD RUSH MOTORSPORTS, INC, MARC  
SUSMAN d/b/a CLASIC & CUSTOM RIDES and  
MARCUS J. MATHEWS,

Defendants.

Civil Action No.: <sup>5</sup> ~~01-CV-1206~~ 60411  
(NAM/DEP)

**STIPULATION OF DISMISSAL WITHOUT PREJUDICE OF  
DEFENDANT PRO-ONE PERFORMANCE MANUFACTURING, INC.**

WHEREAS, the plaintiff James S. Knowles, and defendants Pro-One Performance Manufacturing, Inc., Big Bear American Made Choppers, Inc., Standard Bolt, Nut & Screw Co., Inc., Anorack/Anodize Rack Company, Inc., Gold Rush Motorsports, Inc., Marc Susmann d/b/a Classic & Custom Rides and Marcus J. Mathews, have agreed to the tolling agreement to which this stipulation is annexed, it is hereby stipulated by and between the parties to the above-captioned action, pursuant to Rule 41 (a)(1)(ii) of the Federal Rules of Civil Procedure: (1) that the claims of plaintiff, and the cross-claims of defendants, as against defendant Pro-One Performance Manufacturing, Inc., in the above-captioned action, be, and hereby are, dismissed without prejudice; and (2) that defendant Pro-One Performance Manufacturing, Inc., be, and hereby is, dismissed from the above-captioned action without prejudice.

This Stipulation of Dismissal may be executed in counterparts, each of which shall constitute an original and all of which together shall be deemed and may be filed as a single document.

**HANCOCK & ESTABROOK, LLP**  
~~BOTTAR & LEONE, PLLC~~ **JAMES S. Knader**  
Counsel for ~~Marous Jr. (Mare) Mathews~~

By:   
~~Michael Porter, Esq.~~ **Eric C. Nordby**

Bar Roll No. 506503

Dated: December 4, 2007

**100120** Madison Street, Suite **16001500**

Syracuse, New York 13202

(315) ~~422-3466~~ **471-3151**

**PETRONE & PETRONE, P.C.**  
Counsel for **Big Bear Choppers, Inc**

By:   
David H. Walsh, IV, Esq.

Bar Roll No. 52032

Dated: December 4, 2007

1624 Genesee Street

Utica, New York 13502

(315) 735-7566

**GOLDBERG & SEGALLA, LLP**  
Counsel for **Standard Bolt, Nut & Screw Co., Inc.**

By:   
Latha Raghavan, Esq.

Bar Roll No. 505952

Dated: December 4th, 2007

8 Southwoods Boulevard, Suite 300

Albany, New York 12211

(518) 935-4250

**THE ROSE LAW FIRM, PLLC**  
Counsel for **Pro-One Performance Mfg., Inc.**

By:   
Keith B. Rose, Esq.

Bar Roll No. 102474

Dated: December 4, 2007 **January 9, 2008**

501 New Karner Road

Albany, New York 12205

(518) 869-9200

**WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER, LLP**  
Counsel for **Gold Rush Motorsports, Inc.**

By: \_\_\_\_\_  
Jennifer R. Oxman, Esq.

Bar Roll No. \_\_\_\_\_

Dated: December    , 2006

150 East 42nd Street

New York, New York 10017

(212) 490-3000

**TREVETT, LENWEAVER & SALZER, P.C.**  
Counsel for **Anorack/Anonize Rack Co., Inc.**

By:   
Louis B. Cristo, Esq.

Bar Roll No. 508361

Dated: December 4, 2007

2 State Street, Suite 1000

Rochester, New York 14614

(716) 454-2181

This Stipulation of Dismissal may be executed in counterparts, each of which shall constitute an original and all of which together shall be deemed and may be filed as a single document.

BOTTAR & LEONE, PLLC  
Counsel for Marcus J. (Marc) Mathews

By: \_\_\_\_\_  
Michael Porter, Esq.  
Bar Roll No. \_\_\_\_\_  
Dated: December \_\_, 2007  
120 Madison Street, Suite 1600  
Syracuse, New York 13202  
(315) 422-3466

PETRONE & PETRONE, P.C.  
Counsel for Big Bear Choppers, Inc

By: \_\_\_\_\_  
David H. Walsh, IV, Esq.  
Bar Roll No. \_\_\_\_\_  
Dated: December \_\_, 2007  
1624 Genesee Street  
Utica, New York 13502  
(315) 735-7566

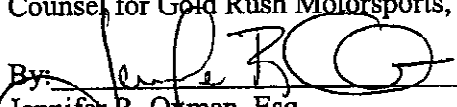
GOLDBERG & SEGALLA, LLP  
Counsel for Standard Bolt, Nut & Screw Co., Inc.

By: \_\_\_\_\_  
Latha Raghavan, Esq.  
Bar Roll No. \_\_\_\_\_  
Dated: December \_\_, 2007  
8 Southwoods Boulevard, Suite 300  
Albany, New York 12211  
(518) 935-4250

THE ROSE LAW FIRM, PLLC  
Counsel for Pro-One Performance Mfg., Inc.

By: \_\_\_\_\_  
Keith B. Rose, Esq.  
Bar Roll No. \_\_\_\_\_  
Dated: December \_\_, 2007  
501 New Karner Road  
Albany, New York 12205  
(518) 869-9200

WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER, LLP  
Counsel for Gold Rush Motorsports, Inc.

By:  \_\_\_\_\_  
Jennifer R. Oxman, Esq.  
Bar Roll No. 508595  
Dated: December 18 2006  
150 East 42nd Street  
New York, New York 10017  
(212) 490-3000

TREVETT, LENWEAVER & SALZER, P.C.  
Counsel for Anorack/Anondize Rack Co., Inc.

By: \_\_\_\_\_  
Louis B Cristo, Esq.  
Bar Roll No. \_\_\_\_\_  
Dated: December \_\_, 2007  
2 State Street, Suite 1000  
Rochester, New York 14614  
(716) 454-2181

COSTELLO, COONEY & FEARON, LLP  
Counsel for Air Fasteners, Inc.

By: Shelly L. DiBenedetto  
Shelly L. DiBenedetto, Esq.  
Bar Roll No. 508989  
Dated: December 4, 2007  
205 South Salina Street, 4th Floor  
Syracuse, New York 13202  
(315) 422-7152

LAW OFFICES OF CHARLES C. KHYM  
Counsel for Defendant Marc Susman  
d/b/a Custom & Classic Rides

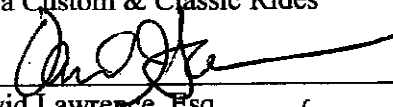
By: \_\_\_\_\_  
David Lawrence, Esq.  
Bar Roll No. \_\_\_\_\_  
Dated: December \_\_, 2007  
39-01 Main Street, Suite 608  
Flushing, New York 11354

MACKENZIE HUGHES, LLP  
Counsel for Defendant Marcus J. Mathews  
By: Mark R. Schlegel  
MARK R. SCHLEGEL, Esq.  
Bar Roll No. 513172  
Dated: December 4, 2007  
101 Smith Salina Street, Suite 600  
P.O. Box 4967  
Syracuse, New York 13221-4967  
(315) 474-7571

COSTELLO, COONEY & FEARON, LLP  
Counsel for Air Fasteners, Inc.


By: \_\_\_\_\_  
Shelly L. DiBenedetto, Esq.  
Bar Roll No. \_\_\_\_\_  
Dated: December \_\_, 2007  
205 South Salina Street, 4th Floor  
Syracuse, New York 13202  
(315) 422-7152

LAW OFFICES OF CHARLES C. KHYM  
Counsel for Defendant Marc Susman  
d/b/a Custom & Classic Rides

By:   
David Lawrence, Esq.  
Bar Roll No. 514404  
Dated: ~~December~~, 2007 *January 3, 2008*  
39-01 Main Street, Suite 608  
Flushing, New York 11354

MACKENZIE HUGHES, LLP  
Counsel for Defendant Marcus J. Mathews  
By: \_\_\_\_\_  
MARK R. SCHLEGEL, Esq.  
Bar Roll No. \_\_\_\_\_  
Dated: December \_\_, 2007  
101 Smith Salina Street, Suite 600  
P.O. Box 4967  
Syracuse, New York 13221-4967  
(315) 474-7571

J:\Data\Pro-One Performance Manufacturing\Matter\13014\Pleadings\Knowles\Tolling Agreement 2.doc

**So Ordered,**  
  
\_\_\_\_\_  
**David E. Peebles**  
**United States Magistrate Judge**  
**Dated:** *1/9/08*  
**Syracuse, New York**